

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM A. GROSS CONSTRUCTION ASSOCIATES,
INC.,

07-CV-10639 (LAK)(AJP)

Plaintiff,

- against -

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

ANSWER TO
FIFTH PARTY
COMPLAINT BY THE
FIFTH PARTY
DEFENDANT, PYRAMID
FIRE PROTECTION, INC.

Defendant,

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AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

CAULDWELL WINGATE COMPANY, LLC,

Third-Party Defendant.

-----x
CAULDWELL WINGATE COMPANY, LLC,

Fourth-Party Plaintiff,

-against-

DORMITORY AUTHORITY OF THE STATE OF
NEW YORK,

Fourth-Party Defendant.

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DORMITORY AUTHORITY OF THE STATE OF NEW YORK,

Fifth-Party Plaintiff,

-against-

A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC., ASPRO MECHANICAL CONTRACTORS, INC., BEAUBOIS CANADA, INC., BOVIS LEND LEASE LMB, INC., CNA SURETY CORPORATION D/B/A AMERICAN CASUALTY COMPANY OF READING, PA, DIERKS HEATING COMPANY, INC., ENCLOS CORPORATION, FIVE STAR ELECTRIC CORPORATION, FUTURE TECH CONSULTANTS OF NEW YORK, INC., HERITAGE AIR SYSTEMS, INC., HUGH O'KANE ELECTRIC CO., LLC, MATERIALS TESTING LAB, INC., PYRAMID FIRE PROTECTION, INC., RAFAEL VINOLY ARCHITECTS P.C., SMI-OWEN STEEL COMPANY, INC., STONEWALL CONTRACTING CORPORATION, TRACTEL LTD. SWINGSTAGE DIVISION,

Fifth-Party Defendants.

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Fifth Party Defendant, **PYRAMID FIRE PROTECTION, INC.**, by Zisholtz & Zisholtz, LLP, its attorneys, in answering the Fifth-Party Complaint, respectfully alleges:

FIRST: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73",

"74", "75", "76" "77", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93" and "94" of the Fifth-Party Complaint.

SECOND: Denies each and every allegation contained in paragraphs marked "1" and "2" of the Fifth-Party Complaint as the same may apply or refer to this answering fifth-party defendant.

THIRD: Denies each and every allegation contained in paragraph marked "17" of the Fifth Party Complaint except alleges that the Fifth Party Defendant, **PYRAMID FIRE PROTECTION, INC.**, was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

FOURTH: Denies each and every allegation contained in paragraph marked "78" and "79" of the Fifth Party Complaint and begs leave to refer to any documents for all of the terms, covenants, conditions and legal effects thereof and specifically alleges that this fifth-party defendant duly performed all of the terms, covenants and conditions of the agreement on its part to be performed.

**ANSWERING THE FIRST CLAIM FOR RELIEF AGAINST DEFENDANT
A. WILLIAMS TRUCKING AND BACKHOE TRENCHING, INC. AS IT MAY
PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION**

FIFTH: Answering the allegations contained in paragraph marked "95" of the Fifth Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "96", "97", "98", "99" and "100" of the Fifth Party Complaint.

**ANSWERING THE SECOND ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, A. WILLIAMS TRUCKING AND BACKHOE TRENCHING, INC.
AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT,
PYRAMID FIRE PROTECTION, INC.**

SEVENTH: Answering the allegations contained in paragraph marked "101" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "102", "103", "104" and "105" of the Fifth-Party Complaint.

**ANSWERING THE THIRD ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT WILLIAMS TRUCKING AND BACKHOE TRENCHING, INC.
AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT,
PYRAMID FIRE PROTECTION, INC.**

NINTH: Answering the allegations contained in paragraph marked "106" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "107" of the Fifth-Party Complaint.

**ANSWERING THE FOURTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, ASPRO MECHANICAL CONTRACTING, INC.,
AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT,
PYRAMID FIRE PROTECTION, INC.**

ELEVENTH: Answering the allegations contained in paragraph marked

"108" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWELFTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "109", "110", "111", "112", "113" and "114" of the Fifth-Party Complaint.

**ANSWERING THE FIFTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT ASPRO MECHANICAL CONTRACTING, INC., AS IT MAY PERTAIN
TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

THIRTEENTH: Answering the allegations contained in paragraph marked "115" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "116", "117", "118", and "119" of the Fifth-Party Complaint.

**ANSWERING THE SIXTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, ASPRO MECHANICAL CONTRACTING, INC., AS IT MAY PERTAIN
TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

FIFTEENTH: Answering the allegations contained in paragraph marked "120" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "121" of the Fifth-

Party Complaint.

**ANSWERING THE SEVENTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, BEAUBOIS CANADA, INC., AS IT MAY PERTAIN TO THE
FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

SEVENTEENTH: Answering the allegations contained in paragraph marked "122" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "123", "124", "125", "126", "127" and "128" of the Fifth-Party Complaint.

**ANSWERING THE EIGHTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, BEAUBOIS CANADA, INC., AS IT MAY PERTAIN TO THE
FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

NINETEENTH: Answering the allegations contained in paragraph marked "129" of the Fifth Party Complaint, this Fifth Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWENTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "130", "131", "132" and "133" of the Fifth Party Complaint.

**ANSWERING THE NINTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, BEAUBOIS CANADA, INC., AS IT MAY PERTAIN TO THE
FIFTH PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

TWENTY-FIRST: Answering the allegations contained in paragraph marked "134" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "135" of the Fifth-Party Complaint.

ANSWERING THE TENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, DIERKS HEATING COMPANY, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

TWENTY-THIRD: Answering the allegations contained in paragraph marked "136" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "137", "138", "139", "140" and "141" of the Fifth-Party Complaint.

ANSWERING THE ELEVENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, DIERKS HEATING COMPANY, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

TWENTY-FIFTH: Answering the allegations contained in paragraph marked "142" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWENTY-SIXTH: Denies knowledge or information sufficient to form a

belief as to each and every allegation contained in paragraphs marked "143", "144", "145" and "146" of the Fifth-Party Complaint.

ANSWERING THE TWELFTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, DIERKS HEATING COMPANY, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

TWENTY-SEVENTH: Answering the allegations contained in paragraph marked "147" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "148" of the Fifth-Party Complaint.

ANSWERING THE THIRTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, ENCLOS CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

TWENTY-NINTH: Answering the allegations contained in paragraph marked "149" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

THIRTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "150", "151", "152", "153" and "154" of the Fifth-Party Complaint.

ANSWERING THE FOURTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, ENCLOS, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

THIRTY-FIRST: Answering the allegations contained in paragraph

marked "155" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

THIRTY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "156" of the Fifth-Party Complaint.

ANSWERING THE FIFTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, FIVE STAR ELECTRIC CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

THIRTY-THIRD: Answering the allegations contained in paragraph marked "157" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

THIRTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "158", "159", "160", "161" and "162" of the Fifth-Party Complaint.

ANSWERING THE SIXTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, FIVE STAR ELECTRIC CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

THIRTY-FIFTH: Answering the allegations contained in paragraph marked "163" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

THIRTY-SIXTH: Denies knowledge or information sufficient to form a

belief as to each and every allegation contained in paragraphs marked "164", "165", "166" and "167" of the Fifth-Party Complaint.

ANSWERING THE SEVENTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, FIVE STAR ELECTRIC CORPORATION AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

THIRTY-SEVENTH: Answering the allegations contained in paragraph marked "168" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "169" of the Fifth-Party Complaint.

ANSWERING THE EIGHTEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HERITAGE AIR SYSTEMS, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

THIRTY-NINTH: Answering the allegations contained in paragraph marked "170" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FORTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "171", "172", "173", "174" and "175" of the Fifth-Party Complaint.

ANSWERING THE NINETEENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HERITAGE AIR SYSTEMS, INC., AS IT MAY PERTAIN TO THE FIFTH PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FORTY-FIRST: Answering the allegations contained in paragraph

marked "176" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FORTY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "177", "178", "179" and "180" of Fifth-Party Complaint.

ANSWERING THE TWENTIETH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HERITAGE AIR SYSTEMS, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FORTY-THIRD: Answering the allegations contained in paragraph marked "181" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FORTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "182" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-FIRST ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HUGH O'KANE ELECTRIC CO., LLC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FORTY-FIFTH: Answering the allegations contained in paragraph marked "183" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FORTY-SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "184", "185",

"186", "187" and "188" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-SECOND ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HUGH O'KANE ELECTRIC CO., LLC, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FORTY-SEVENTH: Answering the allegations contained in paragraph marked "189" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FORTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "190", "191", "192" and "193" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-THIRD ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, HUGH O'KANE ELECTRIC CO., LLC, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FORTY-NINTH: Answering the allegations contained in paragraph marked "194" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FIFTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "195" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-FOURTH ALLEGED CAUSE OF ACTION AGAINST FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FIFTY-FIRST: Answering the allegations contained in paragraph marked "196" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats,

reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FIFTY-SECOND: Denies each and every allegation contained in paragraph marked "197" of the Fifth-Party Complaint and begs leave to refer to any documents for all of the terms, covenants, conditions and legal effects thereof.

FIFTY-THIRD: Denies each and every allegation contained in paragraphs marked "198", "199", "200" and "201" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-FIFTH ALLEGED CAUSE OF ACTION AGAINST FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FIFTY-FOURTH: Answering the allegations contained in paragraph marked "202" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

FIFTY-FIFTH: Denies each and every allegation contained in paragraph marked "203" of the fifth party complaint and begs leave to refer to any documents for all of the terms, covenants, conditions and legal effects thereof.

FIFTY-SIXTH: Denies each and every allegation contained in paragraphs marked "204", "205" and "206" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-SIXTH ALLEGED CAUSE OF ACTION AGAINST FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FIFTY-SEVENTH: Answering the allegations contained in paragraph marked "207" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had

herein with the same force and effect as if fully set forth herein at length.

FIFTY-EIGHTH: Denies each and every allegation contained in paragraph marked "208" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-SEVENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, SMI-OWEN STEEL COMPANY, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

FIFTY-NINTH: Answering the allegations contained in paragraph marked "209" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "210", "211", "212", "213", "214" and "215".

ANSWERING THE TWENTY-EIGHTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, SMI-OWEN STEEL, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SIXTY-FIRST: Answering the allegations contained in paragraph marked "216" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "217", "218", "219" and "220" of the Fifth-Party Complaint.

ANSWERING THE TWENTY-NINTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, SMI-OWEN STEEL COMPANY, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SIXTY-THIRD: Answering the allegations contained in paragraph marked "221" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "222" of the Fifth-Party Complaint.

ANSWERING THE THIRTIETH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, CNA SURETY CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SIXTY-FIFTH: Answering the allegations contained in paragraph marked "223" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTY-SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "224", "225", "226", "227", "228" and "229" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-FIRST ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, CNA SURETY CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SIXTY-SEVENTH: Answering the allegations contained in paragraph marked "230" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SIXTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "231", "232", "233" and "234" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-SECOND ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, CNA SURETY CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SIXTY-NINTH: Answering the allegations contained in paragraph marked "235" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SEVENTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "236" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-THIRD ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, STONEWALL CONTRACTING CORPORATION, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

SEVENTY-FIRST: Answering the allegations contained in paragraph marked "237" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SEVENTY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "238", "239", "240", "241" and "242" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-FOURTH ALLEGED CAUSE OF ACTION AGAINST

**DEFENDANT, STONEWALL CONTRACTING CORPORATION,
AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT,
PYRAMID FIRE PROTECTION**

SEVENTY THIRD: Answering the allegations contained in paragraph marked "243" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SEVENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "244", "245", "246" and, "247" of the Fifth-Party Complaint.

**ANSWERING THE THIRTY-FIFTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, STONEWALL CONTRACTING CORPORATION, AS IT MAY
PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION**

SEVENTY-FIFTH: Answering the allegations contained in paragraph marked "248" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SEVENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "249" of the Fifth-Party Complaint.

**ANSWERING THE THIRTY-SIXTH ALLEGED CAUSE OF ACTION AGAINST
DEFENDANT, TRACTEL, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY
DEFENDANT, PYRAMID FIRE PROTECTION, INC.**

SEVENTY-SEVENTH: Answering the allegations contained in

paragraph marked "250" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

SEVENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "251", "252", "253", "254" and "255" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-SEVENTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, TRACTEL, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION

SEVENTY-NINTH: Answering the allegations contained in paragraph marked "256" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "257" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-EIGHTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, RAFAEL VINOLY ARCHITECTS, P.C., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

EIGHTY-FIRST: Answering the allegations contained in paragraph marked "258" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTY-SECOND: Denies knowledge or information sufficient to form a

belief as to each and every allegation contained in paragraphs marked "259", "260", "261", "262" and "263" of the Fifth-Party Complaint.

ANSWERING THE THIRTY-NINTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, RAFAEL VINOLY ARCHITECTS, P.C., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION

EIGHTY-THIRD: Answering the allegations contained in paragraph marked "264" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "265", "266", and "267" of the Fifth-Party Complaint.

ANSWERING THE FORTIETH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, RAFAEL VINOLY ARCHITECTS, P.C., AS IT MAY PERTAIN TO THE FIFTH PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

EIGHTY-FIFTH: Answering the allegations contained in paragraph marked "268" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTY-SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "269" of the Complaint.

ANSWERING THE FORTY-FIRST ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, BOVIS LEND LEASE LMB, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

EIGHTY-SEVENTH: Answering the allegations contained in paragraph marked "270" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

EIGHTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "271", "272", "273", "274", "275" and "276" of the Fifth-Party Complaint.

ANSWERING THE FORTY-SECOND ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, BOVIS, AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

EIGHTY-NINTH: Answering the allegations contained in paragraph marked "277" of the Fifth-Party Complaint, this Fifth Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

NINETIETH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "278" of the Fifth-Party Complaint.

ANSWERING THE FORTY-THIRD ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, FUTURE TECH CONSULTANTS OF NEW YORK, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

NINETY-FIRST: Answering the allegations contained in paragraph marked "279" of the Fifth Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

NINETY-SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "280", "281", "282", and "283" of the Fifth-Party Complaint.

ANSWERING THE FORTY-FOURTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, FUTURE TECH, AS IT MAY PERTAIN TO THE FIFTH PARTY DEFENDANT, PYRAMID FIRE PROTECTION

NINETY-THIRD Answering the allegations contained in paragraph marked "284" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

NINETY-FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked "285" of the Fifth-Party Complaint.

ANSWERING THE FORTY-FIFTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, MATERIALS TESTING LAB, INC., AS IT MAY PERTAIN TO THE FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

NINETY-FIFTH: Answering the allegations contained in paragraph marked "286" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

NINETY-SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "287", "288" and "289" of the Fifth-Party Complaint.

ANSWERING THE FORTY-SIXTH ALLEGED CAUSE OF ACTION AGAINST DEFENDANT, MATERIALS TESTING LAB, INC., AS IT MAY PERTAIN TO THE

FIFTH-PARTY DEFENDANT, PYRAMID FIRE PROTECTION, INC.

NINETY-SEVENTH: Answering the allegations contained in paragraph marked "290" of the Fifth-Party Complaint, this Fifth-Party Defendant repeats, reiterates and realleges each and every admission, denial or allegation heretofore had herein with the same force and effect as if fully set forth herein at length.

NINETY-EIGHTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs marked "291" of the Fifth-Party Complaint.

**AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE
AND BY WAY OF FIRST COUNTERCLAIM**

NINETY-NINTH: That at all times herein mentioned, this fifth-party defendant was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

ONE HUNDREDTH: That heretofore and on or about November 5, 2001, this fifth-party defendant and the fifth-party plaintiff entered into an agreement by the terms of which this fifth-party defendant was hired and engaged to perform certain work, labor and services and to furnish certain materials in connection with the construction and improvement of the premises known as and located at Bronx Criminal Court Complex, Contract No. 13-Fire Protection Project No. 1380909999/CR52 84C11.

ONE HUNDRED FIRST: That from on or about November 5, 2001, to on or about August 1, 2006, this fifth-party defendant, at the special instance and request of the fifth-party plaintiff its servants, agents or employees, performed all the

work, labor and services on its part to be performed and furnished all of the materials on its part to be furnished and otherwise performed all of the terms, covenants and conditions of the agreement on its part to be performed.

ONE HUNDRED SECOND: That the agreed price and fair and reasonable value of the work, labor and services performed and the materials furnished was \$8,384,820.98, no part of which balance has been paid or credited, except the sum of \$4,262,335.06 leaving a balance due and owing of \$4,122,485.92, no part of which has been paid, although payment has been duly demanded.

ONE HUNDRED THIRD: That by reason of the foregoing, this fifth-party defendant is entitled to judgment against the fifth-party plaintiff for the sum of \$4,122,485.92, with interest thereon from November 5, 2001.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE AND BY WAY OF FIRST COUNTERCLAIM

ONE HUNDRED FOURTH: That heretofore and on or about November 5, 2001, and regularly and periodically thereafter, the Fifth-Party Defendant duly rendered statements of account to the Fifth-Party Plaintiff herein showing the amount due and owing to the Fifth Party Defendant

ONE HUNDRED FIFTH: That the said statements of account were duly received by the Fifth-Party Plaintiff without challenge, complaint, offset, rejection or objection.

ONE HUNDRED SIXTH: That the aforesaid statements of account indicated a balance due and owing of \$4,122,485.92.

ONE HUNDRED SEVENTH: That by reason of the foregoing, the Fifth

Party Defendant is entitled to judgment against the Fifth Party Plaintiff herein, on the basis of an account stated in the sum of \$4,122,485.92 with interest thereon from November 5, 2007.

WHEREFORE, fifth-party defendant, **PYRAMID FIRE PROTECTION, INC.**, demands judgment dismissing the claims against it and for judgment on the two counterclaims in the sum of \$4,122,485.72, together with interest thereon from November 5, 2001, and the costs and disbursements of this action.

ZISHOLTZ & ZISHOLTZ, LLP

By: _____
Gerald Zisholtz (5520)
Attorneys for Fifth Party Defendant,
PYRAMID FIRE PROTECTION
Office and P.O. Address
170 Old Country Road
Mineola, New York 11501
(516) 741-2200

answer to 5th party complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
WILLIAM A. GROSS CONSTRUCTION ASSOCIATES, INC., 07-CV-10639 (LAK)(AJP)
Plaintiff,

- against -
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY,

Defendant,

-----x
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY,
Third-Party Plaintiff,

-against-
CAULDWELL WINGATE COMPANY, LLC,

Third-Party Defendant.

-----x
CAULDWELL WINGATE COMPANY, LLLC,
Fourth-Party Plaintiff,

-against-
DORMITORY AUTHORITY OF THE STATE OF NEW YORK,
Fourth-Party Defendant.

-----x
DORMITORY AUTHORITY OF THE STATE OF NEW YORK,
Fifth-Party Plaintiff,

-against-
A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC., ASPRO MECHANICAL
CONTRACTORS, INC., BEAUBOIS CANADA, INC., BOVIS LEND LEASE LMB, INC.,
CNA SURETY CORPORATION D/B/A AMERICAN CASUALTY COMPANY OF
READING, PA, DIERKS HEATING COMPANY, INC., ENCLOS CORPORATION, FIVE
STAR ELECTRIC CORPORATION, FUTURE TECH CONSULTANTS OF NEW YORK,
INC., HERITAGE AIR SYSTEMS, INC., HUGH O'KANE ELECTRIC CO., LLC,
MATERIALS TESTING LAB, INC., PYRAMID FIRE PROTECTION, INC., RAFAEL
VINOLY ARCHITECTS P.C., SMI-OWEN STEEL COMPANY, INC., STONEWALL
CONTRACTING CORPORATION, TRACTEL LTD. SWINGSTAGE DIVISION,
Fifth-Party Defendants.

ANSWER TO FIFTH PARTY COMPLAINT BY THE FIFTH PARTY DEFENDANT,
PYRAMID FIRE PROTECTION, INC.

ZISHOLTZ & ZISHOLTZ, LLP
Attorneys for Fifth Party Defendant, PYRAMID FIRE PROTECTION, INC.
170 Old Country Road
Suite 300
Mineola, New York 11501
(516) 741-2200

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: *Signature* _____

Print Signer's name _____

Service of a copy of the within

is hereby admitted. Dated:

Attorney(s) for